IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

Crl.MC.No. 235 of 2005

CC.833/2003 of JUDL.MAGISTRATE OF FIRST CLASS-I, ERNAKULAM

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PETITIONERS/ACCUSED:

1. T.A. PALANIAPPAN, F-23, MANICKAM PALAYAM HOUSING UNIT, ERODE-638 011.

2. P. AYYAPPAN, 41C/3, I.A. COLONY, KALINA, SANTACRUZ (E) MUMBAI.

3. A. VELUSWAMY, 14/A, PANAMTHOPPU 6TH STREET, CHINNALLAPURAM, VELLORE-632 001.

BY ADV. SRI.KRISHNA PRASAD. S
SRI.P.M.MANOJ (KANNUR)

RESPONDENT/COMPLAINANT:

STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, REPRESENTING S.I. OF POLICE, RAILWAY POLICE STATION, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P.RAVINDRA BABU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 19/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P. Balachandran, J.

Crl.M.C.No. 235 of 2005

ORDER

Petitioners are accused in C.C.No.833/03 on the file of the Judicial First Class Magistrate's Court-I, Ernakulam, registered on the basis of Annexure-A2 final report submitted by the police, after due investigation in Crime No.23/02 of Railway Police Station, Ernakulam, for offences under Sections 332 and 294(b) of the IPC read with Section 34 thereof and under Section 162 of the Indian Railways Act. The prayer in this Crl.M.C. is to quash all further proceedings in C.C.No. 833/03 aforesaid.

2. I have heard extensive arguments advanced by the learned counsel for the petitioners. The petitioners have got an entirely different case that they were being beaten up by the defacto complainant and other employees of the Railways. Having considered the rival cases levelled against the petitioners and the allegations made by them

against the defacto complainant and others, I am of the view that the case set up by the petitioners cannot be accepted without some evidence in the matter and that the defence set up can be considered only in the course of trial in C.C.No. 833/03, pending on the file of the Judicial First Class Magistrate's Court-I, Ernakulam and that this Court cannot quash the proceedings in a petition filed under Section 482 of the Cr.P.C. This Crl.M.C. is, hence, devoid of merit and deserves to be dismissed.

3. It is submitted by the learned counsel for the petitioners that the first petitioner is now no more; that the second petitioner is the Manager in the Indian Airlines at Bombay; that the third petitioner is employed at Erode and that exemption be granted to them from personal appearance in the court below. The submission deserves to be considered favourably.

In the result, I dismiss this Crl.M.C. But, at the same time, such of the petitioners, who want exemption from personal appearance, are directed to move appropriate application in the court below seeking for permanent exemption from personal appearance. In case applications in that behalf are made before the court below, the learned Magistrate shall consider the applications favourably and shall not insist for personal appearance of the petitioners, unless their appearance is absolutely necessary for the progress of the case.

19th December, 2007 (K.P.Balachandran, Judge)

tkv